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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

McQUAY-NORRIS MANUFACTURING COMPANY,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.
No. 862.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF OF McQUAY-NORRIS MANUFACTURING COMPANY, PETITIONER

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STATEMENT

The facts are not in dispute. They have been correctly stated both in petitioner's brief in support of the petition, and in the opposition brief of respondent.

The question presented by the petition is whether the order of the Board, enforced by the Court below, is too broad, in the light of this Court's decision in *National Labor Relations Board v. Express Publishing Co.,* No. 442, this Term, decided March 3, 1941. Respondent's brief has not attempted to meet this question, but has contended solely that the question is not properly raised, on the ground that it was not presented below.

SUMMARY OF ARGUMENT

A. This Court should grant the petition in this case even if the question was not raised below. The cases cited by respondent involved orders completely satisfied by the payment of a single sum of money. The decree in this case involves a perpetual possibility of contempt proceedings.

B. The question was raised in the court below.

C. Respondent has refused to join in a motion to modify the decree in the court below.

ARGUMENT

A

There is a vital distinction between the erroneous decrees in the *Greenebaum, Subin,* and *Viking Pump* cases, cited by respondent, and the error in the case at bar. The decree in those cases could be complied with, and the obligation of the employer discharged, by one payment of a definite sum of money. The burden on petitioner is not as definite, not as limited in time, nor is it solely pecuniary in its nature. Petitioner has been perpetually enjoined. It must do business forever in the shadow of possible contempt proceedings. It is subject to a possible succession of fines. Its officers and agents are liable to imprisonment if held to have violated the injunction.

Petitioner is therefore subject to great penalties of uncertain character and indefinite duration, a circumstance very different from that in the cases cited by respondent. This Court should exercise its discretion to relieve petitioner of this decree, which it has said, in the case of *National Labor Relations Board v. Express Publishing Company,* No. 442, decided March 3, 1941, the Board is not justified in making, nor are courts "required for the indefinite future to give effect in contempt proceedings to an order of such breadth."

The review of this case will take little of this Court's time. It is directly governed by the *Express Publishing* case. A simple reference to that case is a sufficient opinion to explain the decision of this one for petitioner.

B

Respondent is not accurate in its statement that no question was raised in the court below respecting the Board's order that petitioner cease and desist from in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act. In the statement of points filed with and made part of the petition for review petitioner asserted:

> "6. Said National Labor Relations Board erred in matter of law in ordering respondent to post notices that it would cease and desist from refusing to bargain collectively with United Automobile Workers of America, Local 226, or would cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act." (R. 1210-11; App. p. 531.)*

It appears from the dissenting opinion in this Court in the *Express Publishing* case, that the employer there did not object, in the Circuit Court of Appeals, to the provision of the Board's order which this Court modified, either in its brief or otherwise.

C

Since the order in this case is unlawful, as this Court has recently decided in the *Express Publishing* case; and since respondent has not in its brief contended that there is any distinction between the two cases; it is difficult to see with what justification respondent resists the petition.

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* "App." refers to the printed record below, which was the appendix to petitioner's brief in the Circuit Court of Appeals. "R" refers to the original record certified by the Board to the Circuit Court of Appeals.

Petitioner has asked respondent by letter to join in a motion in the Circuit Court of Appeals to revise the decree. Respondent's position is set forth in a letter appended to this brief. This Court should not exercise its discretion to permit respondent, an agency of the Government, to preserve a wrong that cannot be terminated by the doing of an act or series of acts, but will continue for the future.

CONCLUSION

The petition presents a question which is properly raised; and if not properly raised, a question which this Court in its discretion should review.

Respectfully submitted,

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